

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 01-65
FM Broadcast Stations.)	RM-10078
(Emmetsburg, Sanborn and Sibley, Iowa,)	RM-10188
and Brandon, South Dakota))	RM-10189

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Jim Dandy Broadcasting, Inc. ("Jim Dandy"), licensee of Station KDWD(FM), Emmetsburg, Iowa,¹ by its attorney and pursuant to Section 1.115(d) of the Commission's Rules, hereby opposes the Application for Review filed April 15, 2004 by Saga Communications of Iowa, LLC ("Saga"),² of the February 27 Memorandum Opinion and Order (the "MO&O") of the Assistant Chief, Audio Division, DA 04-363

¹ Jim Dandy acquired Station KDWD(FM), Emmetsburg, IA, from Eisert Enterprises, Inc. ("Eisert") in January 2003 and has succeeded Eisert in this proceeding. Eisert was the initial proponent of the KDWD upgrade from Channel 261A to 261C3. Pursuant to a CP issued May 30, 2003, Jim Dandy is now operating KDWD as a Class C3 facility.

² Saga filed an Erratum on April 23, 2004.

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(the MO&O is annexed hereto as Ex. 1 for the reviewing staff's convenience).³

FCC staff have already undertaken two comprehensive comparative examinations of the additional service to be provided by the Emmetsburg upgrade and Saga's proposed upgrade of vacant Brandon, SD Channel 261A to 261C3 (see footnote 8, below). Both times the Emmetsburg upgrade was deemed to be the superior: by some 4415 persons in 2002;⁴ and by 4315 persons in the MO&O.

Now Saga seeks a third bite at the apple (hope springs eternal). It arrogantly charges the Audio Division with "overwhelming evidence of mistake," questions the

³ Saga's Application is egregiously untimely. The MO&O was publicly released February 27, 2004. It does not call for Federal Register publication. Nonetheless, on March 16 notice of the MO&O was given in the Federal Register. 69 FR 12277.

Section 1 115(d) mandates that applications for review be filed "within 30 days from the date of public notice of that action, as that date is defined in § 1 4(b)." Rule 1 4(b)(3) declares (emphasis added)

(3) For rulemakings of particular applicability, if the rulemaking document is to be published in the Federal Register and the Commission so states in its decision, the date of public notice will commence on the day of the Federal Register publication date. If the decision does not specify Federal Register publication, the date of public notice will commence on the release date, even if the document is subsequently published in the Federal Register. See Declaratory Ruling, 51 FR 23059 (June 25, 1986) [adverted to, below]

While Section 1 4(b)(1) recites that the Federal Register publication date covers "all documents in notice and comment and non-notice and comment proceedings required by the Administrative Procedure Act, 5 USC §§ 552, 553, to be published in the Federal Register," neither APA Section 552 or 553 says or even implies that reconsideration orders in allotment cases require publication in the Federal Register. The publicly released and generally available MO&O is persuasive evidence that they do not.

Indeed, Section 553(b) of the APA, 5 USC § 553(b) specifies that "[g]eneral notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or have actual knowledge thereof in accordance with law (emphasis added). Accord, Declaratory Ruling, Clarification of Date of Public Notice, at 51 FR 23060 n.2. The purpose of Federal Register publication is to ensure that interested parties are put on notice of the agency's action. That purpose was served here by the general release of the MO&O.

The only interested parties in this case are Jim Dandy and Saga. Both had actual knowledge of the MO&O as of February 27, 2004, when notice was given to them, and the world, of the Audio Division's ruling. Federal Register publication was not specified in the MO&O, was superfluous under the APA and, by rule, is not material here. Saga could easily have filed its Application within 30 days of the release date, but opted at its peril not to do so.

This *sui generis* proceeding affecting only two entities who received actual notice on the release date is perforce a "rulemaking[] of particular applicability." Per Section 1 4(b)(3), applications for review of the MO&O were due by or before March 29. Saga's filing, late by 17 days, must be summarily dismissed.

⁴ Emmetsburg, Sanborn and Sibley, Iowa, and Brandon, South Dakota (Report and Order), 17 FCC Rcd 18308 (M. Bur. 2002).

staff's "degree of care" and demands that, when its Application is rejected, the Commission "explain in detail" its rationale "so that the matter can be examined by other reviewing authorities." App. at 5-6.

The problem is that it is Saga, not FCC staff, which is relying on 'overwhelmingly mistaken' and misleading information. Saga's new studies are not conducted in conformance with well-established allotment standards: each study inappropriately employs terrain variations to reach its conclusion; each study methodology differs from that of the others; and, not surprisingly, each attains a differing result. Saga's studies are unacceptable.⁵ In fact the Audio Division has been correct from the outset and Saga's gratuitous charges of staff ineptitude while it is simultaneously promoting a patently objectionable technical position is the pot calling the kettle black.⁶

Two engineering studies annexed hereto as Ex. 2 and 3 -- which, unlike those in the Application, are undertaken in accordance with established FCC allotment requirements -- confirm the accuracy of the Audio Division's conclusions, both in the 2002 Report and Order (footnote 4) and in the MO&O, that Emmetsburg is the clearly preferential allotment. The staff was right the first time and it was right again two months ago that, in terms of expanded service, upgrading KDWD to Class C3 best serves the public interest. Saga has not presented a scintilla of permissible evidence warranting Commission review.

⁵ *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398, 6399 ¶¶ 4, 5, 7, 9 (1988)

⁶ Saga has the *chutzpah* to take the Audio Division to task, App. at 5 and Att. B, for a supposed "arithmetical error" of 447 persons in the MO&O while neglecting to mention that the alleged error, when corrected, favours the Emmetsburg upgrade

It is settled FCC policy (except for narrowly limited circumstances not applicable here) that showings in allotment proceedings must utilize standard prediction methods and average terrain calculations which presume uniform elevation in all directions. *Woodstock and Broadway, Virginia, supra* (“the Commission generally assumes that a station’s city grade coverage contour is a circle with a defined radius from a hypothetical transmitter site”).⁷ Saga disdains the policy. Its studies, which rely variously (and disparately) on terrain variations for all facilities, including vacant allotments and upgrade proposals, are not valid. Black letter Commission precedent dictates that they be disregarded, *id.*, at 3 FCC Rcd 6398-99 ¶ 7; *see, also*, citations in footnote 7.

Ex. 2 and 3 hereto consist of studies prepared by the consulting firms Graham Brock, Inc., which previously prepared the allotment materials in this proceeding for Eisert; and D.L. Markley & Associates, Inc. These properly performed showings confirm the accuracy of the Audio Division’s repeated conclusions that Emmetsburg’s is the preferred allotment. The Graham Brock study finds that the Emmetsburg upgrade would serve some 2360 more persons than Brandon. Similarly, the Markley study reveals that the Emmetsburg upgrade would serve 2150 more persons than Brandon. These studies and their respective methodologies speak for themselves and need not be summarized here. It is beyond reasonable dispute that allotting Channel 261C3 to Emmetsburg best serves the public interest.


⁷ *Id.*, at 3 FCC Rcd 6399 ¶ 9. *Accord, e.g., Dos Palos, Chualar and Big Sur, California*, DA 04-143, MM Docket No. 01-248 (M Bur., February 4, 2004), ¶ 10 and n.17; *Cloverdale, Montgomery and Warrior*, Alabama, 12 FCC Rcd 2090 ¶¶ 2, 6 (MM Bur. 1997), Caldwell, *College Station and Gause, Texas*, 11 FCC Rcd 5326 ¶ 7 (MM Bur. 1996) [*subsequent history omitted*]; *Alfred, Campbell and Waverly, New York*, 8 FCC Rcd 8662 ¶ 13 (MM Bur. 1993), *Hartford, Utah*, 8 FCC Rcd 4920 ¶¶ 3, 4 (MM Bur. 1993), *Stuart and Boone, Iowa*, 6 FCC Rcd 6036 n.3 (MM Bur. 1991).

In conclusion, the Audio Division has correctly concluded that Emmetsburg, not Brandon, is entitled to the requested Class C3 upgrade. Saga has failed to show reversible error -- indeed, any error -- in those determinations.⁸ The MO&O should be affirmed.

WHEREFORE, for the foregoing reasons, Saga's Application for Review must be dismissed or denied.

Respectfully submitted,

JIM DANDY BROADCASTING, INC.

By: _____
Lawrence Bernstein

Its Attorney

LAW OFFICES OF
LAWRENCE BERNSTEIN
1818 N Street, NW
Suite 700
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(202) 296-1800

April 30, 2004

Attachments

⁸ Jim Dandy reasserts and incorporates by reference the argument most recently advanced in Eisert's January 10, 2003 Opposition to Petition for Reconsideration at 5-6, but not addressed in the MO&O, that it was inappropriate and contrary to well-established case precedent to let Saga seek an upgrade of a vacant FM channel (in this instance, trying to make the Class A Brandon allotment into a Class C3). The law is clear that such upgrades are only allowable for licensees and permittees, not for counterproposers who cannot be compelled to apply for the enhanced facility. Saga's Application should be rejected on this ground as well.

EXHIBIT 1

Memorandum Opinion and Order, DA 04-363
(M. Bur., February 27, 2004)

Before the
Federal Communications Commission
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In the Matter of)	
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Amendment of Section 73.202(b),)	
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)	
)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: February 25, 2004**Released: February 27, 2004**

By the Assistant Chief, Audio Division

1 The Audio Division has before it a Petition for Reconsideration filed by Saga Communications of Iowa, LLC ("Saga Communications") directed to the *Report and Order* this proceeding.¹ Eisert Enterprises, Inc. filed an Opposition to Petition for Reconsideration and Saga Communications filed a Reply to Opposition. For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. At the request of Eisert Enterprises, Inc., licensee of Station KDWD (formerly KEMB), Channel 261A, Emmetsburg, Iowa, the *Notice of Proposed Rule Making* proposed the substitution of Channel 261C3 for Channel 261A at Emmetsburg, Iowa, and modification of the Station KDWD license to specify operation on Channel 261C3.² In order to accommodate Channel 261C3 at Emmetsburg, the *Notice* also proposed the deletion of Channel 262A at Sibley, Iowa. In response to the *Notice*, Saga Communications filed a Counterproposal proposing the substitution of Channel 261C3 for vacant Channel 261A at Brandon, South Dakota. This proposal also required the deletion of Channel 262A at Sibley, Iowa. Eisert Enterprises, Inc. filed a Counterproposal adding Channel 264A at Sanborn, Iowa, to its original proposal.³ In addition to allotting Channel 264A to Sanborn, Iowa, the *Report and Order* substituted Channel 261C3 for Channel 261A at Emmetsburg and modified the Station KDWD license to specify operation on Channel 261C3. That action was premised on the fact that this upgrade would provide additional service to 28,607 persons while upgrading the vacant Brandon allotment would provide additional service to 26,223 persons.

¹ *Emmetsburg, Sanborn and Sibley, Iowa, and Brandon, South Dakota*, 17 FCC Rcd 18308 (MMB 2002).

² *Emmetsburg and Sibley, Iowa*, 16 FCC Rcd 4932 (MMB 2001).

³ In *Taccoa, Sugar Hill and Lawrenceville, Georgia*, 16 FCC Rcd 21191 (MMB 2001), we announced that we would not routinely permit a party to file a counterproposal to its own proposal in the absence of an explanation as to why the counterproposal could not have been advanced as part of the original petition for rule making. In this instance, the Counterproposal was filed prior to our decision in *Taccoa* and consideration of the Channel 264A proposal for Sanborn did not prejudice Saga Communications.

3 In support of its Petition for Reconsideration, Saga Communications contends that upgrading the Brandon allotment would, using 2000 U.S. Census data, result in additional service to 27,274 persons while upgrading the Emmetsburg allotment would provide additional service to 24,939 persons. As such, the Brandon upgrade should have been the preferred allotment.⁴

4. We deny the Petition for Reconsideration. We have conducted our own engineering review of the respective proposals using the block centroid data available from the 2000 U.S. Census. Based on this data, we have determined that the proposed upgrade at Emmetsburg will now result in additional service to 28,929 persons. This calculation is based upon existing service to 24,961 persons and a proposed service to a total of 53,990 persons. In comparison, the proposed upgrade at Brandon would result in additional service to 24,614 persons. This calculation is based upon the current allotment at Brandon serving 159,139 persons and the proposed Class C3 allotment serving 183,753 persons. The calculations for both Emmetsburg and Brandon are consistent with our earlier calculations in this proceeding and support our decision favoring the upgrade at Emmetsburg.

5 Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Saga Communications of Iowa, LLC IS DENIED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7 For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁴ See *Revision of FM Allotment Policies and Procedures*, 90 FCC 2d 88 (1982), see also *Greenup, Kentucky*, and *Athens, Ohio*, 6 FCC Rcd 1493 (1991).

EXHIBIT 2

Technical Statement of Graham Brock, Inc.
April 26, 2004

OPPOSITION TO APPLICATION FOR REVIEW
MM DOCKET # 01-65
JIM DANDY BROADCASTING, INC.
EMMETSBURG, IOWA
April 2004

TECHNICAL STATEMENT

This technical statement and attached exhibits were prepared on behalf of Jim Dandy Broadcasting, Inc. ("JDB"), licensee of station KDWD, Channel 261A, Emmetsburg, Iowa. In MM Docket #01-65, Channel 261C3 was substituted for Channel 261A at Emmetsburg, Iowa, and further, the requested upgrade to the vacant allotment of Channel 261A at Brandon, South Dakota, was denied

Saga Communications of Iowa, LLC ("Saga") has submitted an Application for Review with the Commission, indicating the Commission erred in the grant of the upgrade at Emmetsburg, Iowa, and should have instead granted the upgrade of the vacant allotment at Brandon. Saga has submitted population data which, it claims, shows that the upgrade at Brandon, South Dakota, would provide new service to a larger number of persons than that which could be achieved by the Emmetsburg, Iowa, upgrade. This is contrary to the data which the Commission's staff calculated in this proceeding, as is indicated in the FCC's Memorandum Opinion and Order in MM Docket #01-65, adopted February 25, 2004 (released February 27, 2004). Saga claims the Commission made an error in its calculations.

DISCUSSION

In reviewing Saga's submission, it has provided three independent calculations of the population within the 60 dBu contours of the existing Class A in Emmetsburg; the allotted Channel 261C3 at Emmetsburg (although one of the three parties used the Emmetsburg construction permit in lieu of a maximum Class C3); the allocation for Channel 261A at Brandon, South Dakota, and the proposed Channel 261C3 at Brandon, South Dakota. In each case, the data varies from one consultant to the other. This variation is explained as a result of the use of two different terrain databases (30 second and 3 second) and the use of a different number of radials for the calculation of the distances to the 60 dB contours of the four channels being examined. The use of these different variables can result in these types of differences.

However, the use of terrain variations, which was considered for all facilities in the Saga submission, is not proper for a comparison of two different upgrade proposals in the context of a Rule Making proceeding. The use of terrain is not appropriate when applied to vacant allotments or upgrade proposals and varies from the Commission's standard policies for calculating population for a proposed new allotment. Instead, Saga should have calculated the population within a service radius for the class under study. For example, for a Class A, the 60 dBu service radius is 28.3 kilometers. A non-terrain impacted circle of 28.3 kilometers out from the site should be used for calculating population. Similarly, for a Class C3 facility, the reference distance to the 60 dBu contour is 39.1 kilometers and, as such, population within a circle of that distance out from the transmitter site should be calculated. In this instant case, the only licensed facility is the KDWD Class A. Its predicted contour, with terrain features, is an appropriate for use for comparison purposes.

Based on the above, using the actual KDWD Class A facility, in comparison to the theoretical maximum class facilities for the upgraded channel at Emmetsburg and for both the Class A and Class C3 facilities at Brandon, South Dakota, the following populations are calculated (all data 2000 U.S. Census) Attached as Exhibits #1 through #4 are the tabulated population for each facility.

<u>FACILITY</u>	<u>POPULATION</u>
KDWD Class A Licensed	24,626
Emmetsburg C3	53,299
DIFFERENCE	28,673
Brandon Class A	158,390
Brandon Class C3	184,703
DIFFERENCE	26,313

Based on the foregoing data, the Emmetsburg, Iowa, upgrade would provide expanded service to 28,673 persons, whereas the Brandon upgrade would serve 26,313 persons. This is a difference of 2,360 persons more for the Emmetsburg upgrade. While these numbers do not directly match those provided by the FCC's calculations, they do show that the Emmetsburg upgrade should be preferred, which agrees with the Commission's position As for the

calculation error, there is an mathematical error in the differences listed by the Commission in its Memorandum Opinion and Order. Specifically, the subtraction of 24,961 from 53,990 results in 29,029 person (rather than 28,929). This increases the number of persons served by the Emmetsburg upgrade, based on the Commission's provided data.

The foregoing was prepared on behalf of Jim Dandy Broadcasting, Inc , by Graham Brock, Inc., its technical consultants. All data herein is true and accurate to the best of our belief and knowledge. All data regarding FM facilities was extracted from the CDBS database, and all population data was extracted from the 2000 Census database. We assume no liability for errors or omissions in those databases which may be adverse the information contained in this report.

Graham Brock, Inc. Population Report

Contour Parameters:

Type: FCC Contour

F(50-50) Cutoff: 60.00 dBu

Population Database: 2000 US Census (SF1)

Primary Terrain: V-Soft 30 Second US Database

Secondary Terrain: V-Soft US 3 Arc-Second Database

Transmitter Information:

Call Letters: KDWD

File Number: BLH-19980917KC

Latitude: 43-07-24 N

Longitude: 094-51-29 W

ERP: 3.90 kW

Channel: 261A

AMSL Height: 535.0 m

Horiz. Antenna Pattern: Omni

Vert. Elevation Pattern: No

Total Population Within Contour: 24,626

Total Housing Units Within Contour: 11,171

Total Area Within Contour: 2513.57 sq. km

	Housing Units	Population
Iowa		
Buena Vista County		
KDWD	5	11
White:		11
Black:		0
Hispanic:		0
Native American:		0
Asian:		0
Pacific Islander:		0
Mixed Race:		0
Other:		0
Clay County		
KDWD	6,336	14,049
White:		13,624
Black:		28

EXHIBIT #1
OPPOSITION TO
APPLICATION FOR REVIEW
MM DOCKET #01-65
JIM DANDY BROADCASTING, INC.
EMMETSBURG, IOWA
April 2004

Hispanic:		168
Native American:		15
Asian:		141
Pacific Islander:		5
Mixed Race:		66
Other:		2
Dickinson County		
KDWD	342	771
White:		754
Black:		3
Hispanic:		4
Native American:		2
Asian:		4
Pacific Islander:		0
Mixed Race:		4
Other:		0
Emmet County		
KDWD	353	821
White:		806
Black:		0
Hispanic:		12
Native American:		2
Asian:		0
Pacific Islander:		0
Mixed Race:		1
Other:		0
Palo Alto County		
KDWD	4,086	8,861
White:		8,690
Black:		9
Hispanic:		65
Native American:		16
Asian:		29
Pacific Islander:		4
Mixed Race:		45
Other:		3
Pocahontas County		
KDWD	49	113
White:		108
Black:		0
Hispanic:		4
Native American:		0

Asian:	0
Pacific Islander:	1
Mixed Race:	0
Other:	0

Graham Brock, Inc. Population Report

Contour Parameters:

Type: Circle

Radius - 39.1 km

Population Database: 2000 US Census (SF1)

EXHIBIT #2
OPPOSITION TO
APPLICATION FOR REVIEW
MM DOCKET #01-65
JIM DANDY BROADCASTING, INC.
EMMETSBURG, IOWA
April 2004

Transmitter Information.

Call Letters: Emmetsburg C3

File Number: Docket #91-65

Latitude: 43-07-24 N

Longitude: 094-51-29 W

ERP: 25.00 kW

Channel: 261C3

Horiz. Antenna Pattern: Omni

Vert. Elevation Pattern: No

Total Population Within Contour: 53,299

Total Housing Units Within Contour: 26,716

Total Area Within Contour: 4797.98 sq. km

	Housing Units	Population
Iowa		
Buena Vista County		
Emmetsburg C3	1,029	2,167
White:		2,119
Black:		0
Hispanic:		32
Native American:		5
Asian:		2
Pacific Islander:		0
Mixed Race:		8
Other:		1
Clay County		
Emmetsburg C3	1,418	16,529
White:		16,075
Black:		30
Hispanic:		184
Native American:		15
Asian:		141
Pacific Islander:		5

	Mixed Race:		77
	Other:		2
Dickinson County			
Emmetsburg C3	7,805	11,377	
	White:		11,177
	Black:		19
	Hispanic:		75
	Native American:		32
	Asian:		22
	Pacific Islander:		1
	Mixed Race:		50
	Other:		1
Emmet County			
Emmetsburg C3	4,060	9,306	
	White:		8,725
	Black:		24
	Hispanic:		466
	Native American:		17
	Asian:		31
	Pacific Islander:		1
	Mixed Race:		42
	Other:		0
Kossuth County			
Emmetsburg C3	592	1,255	
	White:		1,233
	Black:		6
	Hispanic:		6
	Native American:		6
	Asian:		1
	Pacific Islander:		0
	Mixed Race:		3
	Other:		0
Palo Alto County			
Emmetsburg C3	4,623	10,121	
	White:		9,931
	Black:		9
	Hispanic:		77
	Native American:		17
	Asian:		30
	Pacific Islander:		4
	Mixed Race:		50
	Other:		3

Pocahontas County

Emmetsburg C3

1,189

2,544

White:	2,490
Black:	1
Hispanic:	21
Native American:	6
Asian:	9
Pacific Islander:	1
Mixed Race:	16
Other:	0

Graham Brock, Inc. Population Report

Contour Parameters:

Type: Circle

Radius = 28.3 km

Population Database: 2000 US Census (SF1)

EXHIBIT #3
OPPOSITION TO
APPLICATION FOR REVIEW
MM DOCKET #01-65
JIM DANDY BROADCASTING, INC.
EMMETSBURG, IOWA
April 2004

Transmitter Information:

Call Letters: Brandon Class A

File Number: RM-8729

Latitude: 43-36-02 N

Longitude: 096-31-15 W

ERP: 6.00 kW

Channel: 261A

Horiz. Antenna Pattern: Omni

Vert. Elevation Pattern: No

Total Population Within Contour: 158,390

Total Housing Units Within Contour: 64,530

Total Area Within Contour: 2516.07 sq. km

	Housing Units	Population
Iowa		
Lyon County		
Brandon A	903	2,372
	White:	2,349
	Black:	0
	Hispanic:	7
	Native American:	1
	Asian:	4
	Pacific Islander:	0
	Mixed Race:	11
	Other:	0

	Housing Units	Population
Minnesota		
Rock County		
Brandon A	3,399	7,825
	White:	7,606
	Black:	34

Hispanic:	99
Native American:	16
Asian:	31
Pacific Islander:	0
Mixed Race:	37
Other:	2

	Housing Units	Population
South Dakota		
Lincoln County		
Brandon A	3,961	10,706
White:		10,337
Black:		49
Hispanic:		97
Native American:		50
Asian:		71
Pacific Islander:		2
Mixed Race:		92
Other:		8
Minnehaha County		
Brandon A	56,266	137,484
White:		126,038
Black:		2,211
Hispanic:		3,127
Native American:		2,622
Asian:		1,463
Pacific Islander:		50
Mixed Race:		1,879
Other:		94
Moody County		
Brandon A	1	3
White:		3
Black:		0
Hispanic:		0
Native American:		0
Asian:		0
Pacific Islander:		0
Mixed Race:		0
Other:		0

Graham Brock, Inc. Population Report

Contour Parameters:

Type: Circle

Radius = 39.1 km

Population Database: 2000 US Census (SF1)

EXHIBIT #4
OPPOSITION TO
APPLICATION FOR REVIEW
MM DOCKET #01-65
JIM DANDY BROADCASTING, INC.
EMMETSBURG, IOWA
April 2004

Transmitter Information:

Call Letters: Brandon C3

File Number: RM-8729

Latitude: 43-36-01 N

Longitude: 096-31-15 W

ERP: 25.00 kW

Channel: 261C3

Horiz. Antenna Pattern: Omni

Vert. Elevation Pattern: No

Total Population Within Contour: 184,703

Total Housing Units Within Contour: 74,579

Total Area Within Contour: 4797.98 sq. km

	Housing Units	Population
South Dakota		
Lincoln County		
Brandon C3	7,010	18,838
White:		18,268
Black:		72
Hispanic:		136
Native American:		94
Asian:		106
Pacific Islander:		3
Mixed Race:		151
Other:		8
Minnehaha County		
Brandon C3	59,502	146,297
White:		134,676
Black:		2,217
Hispanic:		3,182
Native American:		2,669
Asian:		1,477
Pacific Islander:		51

	Mixed Race:		1,928
	Other:		97
Moody County			
Brandon C3	378	977	
	White:		959
	Black:		4
	Hispanic:		4
	Native American:		4
	Asian:		0
	Pacific Islander:		0
	Mixed Race:		6
	Other:		0
Turner County			
Brandon C3	47	147	
	White:		143
	Black:		0
	Hispanic:		3
	Native American:		1
	Asian:		0
	Pacific Islander:		0
	Mixed Race:		0
	Other:		0

	Housing Units	Population
Iowa		
Lyon County		
Brandon C3	3,043	7,673
	White:	7,581
	Black:	8
	Hispanic:	31
	Native American:	13
	Asian:	11
	Pacific Islander:	0
	Mixed Race:	28
	Other:	1
Sioux County		
Brandon C3	16	53
	White:	43
	Black:	0
	Hispanic:	6
	Native American:	0

Asian:	1
Pacific Islander:	0
Mixed Race:	1
Other:	2

	Housing Units	Population

Minnesota		
Nobles County		
Brandon C3	24	59
White:		59
Black:		0
Hispanic:		0
Native American:		0
Asian:		0
Pacific Islander:		0
Mixed Race:		0
Other:		0
Pipestone County		
Brandon C3	508	1,148
White:		1,111
Black:		0
Hispanic:		13
Native American:		3
Asian:		6
Pacific Islander:		0
Mixed Race:		15
Other:		0
Rock County		
Brandon C3	4,051	9,511
White:		9,192
Black:		52
Hispanic:		124
Native American:		36
Asian:		58
Pacific Islander:		1
Mixed Race:		46
Other:		2

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

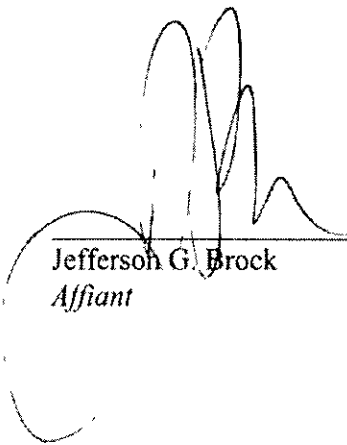
State of Georgia)
St Simons Island) ss
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Jim Dandy Broadcasting, Inc., to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

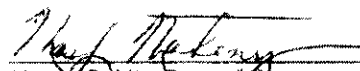
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 26th day of April, 2004



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 26th day of April, 2004*



Notary Public, State of Georgia
My Commission Expires September 3, 2007

EXHIBIT 3

Engineering Statement of D.L. Markley & Associates, Inc.
April 29, 2004

Engineering Statement

The following engineering statement has been prepared for Jim Dandy Broadcasting, Inc., licensee of FM broadcast station KDWD at Emmetsburg, Iowa, and is in support of their Opposition to Application for Review concerning MM Docket 01-65.

In the above referenced docket, channel 261C3 was substituted for channel 261A at Emmetsburg, Iowa, and the vacant allocation for Sibley, Iowa on channel 262A was deleted. Under this proceeding, a counterproposal was filed by Saga Communications of Iowa, LLC requesting a substitution of channel 261C3 at Brandon, South Dakota for the vacant allotment of channel 261A at that community. Saga also proposed the deletion of channel 262A at Sibley, Iowa. A second counterproposal was filed by Eisert Enterprises, Inc. proposing channel 261C3 at Emmetsburg, Iowa, deleting channel 262A at Sibley, Iowa, and the addition of channel 264A at Sanborn, Iowa as that community's first local service. The license of KDWD at Emmetsburg, Iowa has subsequently been transferred to Jim Dandy Broadcasting, Inc.

Under the initial decision in this docket, the proposal of Eisert was favored by the Commission's Staff, and channel 261C3 was substituted for channel 261A at Emmetsburg, Iowa, and channel 264A was then allotted to Sanborn, Iowa.

Saga subsequently filed a Petition for Reconsideration with the Commission requesting that their proposal be favored over the Eisert proposal. This Petition for Reconsideration was denied by the Staff. Saga has now filed an application for full Commission review of the actions taken by the Commission's Staff in MM Docket 01-65. For the reasons discussed in this statement, the application for review filed by Saga should be denied.

In its application for review Saga contends that the Commission's Staff erred and used incorrect population figures. To support this claim, Saga submits technical data from three independent engineering consultants that the Saga upgrade of channel 261 from a class A facility to a class C3 facility at Brandon, South Dakota, would result in service to a greater population than the upgrade from channel 261A to channel 261C3 at Emmetsburg, Iowa. The method employed by these consultants appears to be incorrect based on previous actions and precedent taken by the Commission.

Each of the three consultants utilized the Commission's standard propagation model for determining the coverage contour for the facilities in question, although each used somewhat different methods in arriving at their conclusions. In the case of the facility at KDWD, both the licensed parameters as a class A facility and the construction permit facilities (BPH-20021113AAS) for which a license has been filed (BLH-20030819AAJ) were considered for purpose

of calculations. For the Brandon proposal, the consultants utilized the geographic coordinates for the allocation. In determining the 60 dBu service contour for the four "facilities" in question, the average terrain appears to have been used. While this would be the proper method for determining coverage of a particular facility at the construction permit/license stage, previous Commission action has held that such a procedure is typically not utilized in rulemaking proceedings.

In the Memorandum Opinion and Order for Woodstock and Broadway, Virginia 3 *FCC Rcd* 6398 (1988), the Commission states "...the Commission does not use actual terrain conditions to predict signal coverage in allotment proceedings. Instead, we generally utilize average terrain figures which assume uniform elevation in all directions."

While the population figures determined from our analysis are not numerically identical to those obtained by the Staff, they nevertheless confirm the findings of the Staff that a greater increase in population would be served by allocating channel 261C3 to Emmetsburg, Iowa.

In determining these population figures, a circle contour, the radius of which is equivalent to the distances specified in Section 73.211 (b) (1) of the Commission's Rules, was created for each facility. The four "facilities" under

consideration are the class A allocation for KDWD at the licensed KDWD site, the class C3 allocation for KDWD at the allocation reference coordinates, the class A allocation for Brandon, South Dakota at the allocation reference coordinates, and the proposed class C3 allocation at Brandon, South Dakota, at the allocation reference coordinates. Each of the four "facilities" was then studied under both the 1990 and the 2000 Census data. The actual 60 dBu service contour of KDWD as a class A facility was based on the licensed parameters and a 3 second terrain database with average terrain values in one degree increments of azimuth. The population figures obtained are detailed in the following table:

Facility	Contour Radius (km)	1990 Population	2000 Population
KDWD Class A	Actual 60 dBu Contour	24,851	24,466
KDWD Class C3	39	53,044	53,053
Brandon Class A	28	129,352	158,082
Brandon Class C3	39	151,731	184,519
KDWD Population Gain by 1990 Census		28,193	
KDWD Population Gain by 2000 Census		28,587	
Brandon Population Gain by 1990 Census		22,379	
Brandon Population Gain by 2000 Census		26,437	

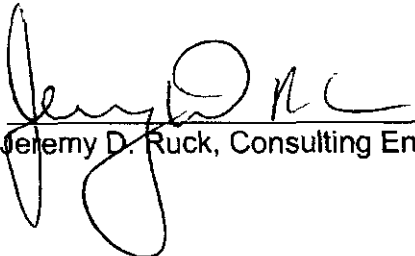
Based on these figures, it is respectfully submitted that a greater increase in population served would be experienced by the Commission maintaining the Staff's decision to allot channel 261C3 at Emmetsburg, Iowa than would be experienced should the Commission choose to reverse the Staff's decision and allot channel 261C3 at Brandon, South Dakota. Furthermore, it is respectfully submitted that this situation would exist regardless of whether the 1990 or 2000 Census data were utilized in the analysis. It is therefore respectfully requested

that the Commission deny the application for review filed by Saga on the grounds that the allotment of channel 261C3 at Emmetsburg, Iowa, is the more superior of the two proposals.

It is therefore respectfully submitted that the Commission's Staff did not err in allocating channel 261C3 to Emmetsburg, Iowa. Furthermore, it is respectfully submitted that the staff took the proper action by denying the petition for reconsideration filed by Saga. The Staff followed proper technical analysis considerations when choosing between the Eisert and Saga proposals, and that the allotment of channel 261C3 to Emmetsburg, Iowa is the more superior proposal.

The preceding statement and attached exhibits have been prepared by me, or under my direction, and are true and accurate to the best of my belief and knowledge

4-29-2004
Date


Jeremy D. Ruck, Consulting Engineer

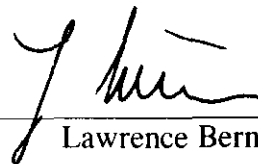
CERTIFICATE OF SERVICE

I hereby certify that I have, this 30th day of April, 2004, served copies of the foregoing "Opposition to Application for Review" upon the following persons by first class United States Mail, postage prepaid:

Robert Hayne, Esq.
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, SW 3-A247
Washington, D.C. 20554

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, D.C. 20016

Counsel for Saga Communications
of Iowa, LLC

A handwritten signature in black ink, appearing to read "Lawrence Bernstein", is written over a horizontal line.

Lawrence Bernstein